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Seneca Nation of Indians

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 5, 2003

Mr. Michael Powell, Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Draft Nationwide Programmatic Agreement
WT Docket No. 03-128; FCC 03-125

Dear Chairman Powell:

On behalf of the Seneca Nation of Indians, a member tribe of the United South and Eastern Tribes, Inc. (USET), I am writing to endorse the detailed comments being submitted by USET with regard to the above matter. In addition, I would like to draw your attention to several key issues that are critical, from a tribal perspective, if the programmatic agreement is going to be successfully implemented.

Let me begin by expressing appreciation for the FCC's consultation efforts with USET over the past several months. Those efforts reflect an understanding of the unique government-to-government relationship between the United States and sovereign Indian tribes, as well as the Federal government's trust responsibility to Indian peoples.

The National Historic Preservation Act specifically requires that Federal agencies must consult with tribes before engaging in a Federal undertaking that could affect a property of religious and cultural importance to us, whether or not these properties are on tribal lands today. This law provides critical protection for our tribal heritage. We would like to see it strictly enforced and strictly implemented in the Nationwide Programmatic Agreement. Like the other USET tribes,

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Page Two
August 5, 2003

we have lost nearly all of our land over the last 500 years. Because of this, the vast majority of our sites are not on our current tribal lands. This is one of the few ways under Federal law that we can protect our sacred heritage.

We fully support the detailed comments submitted by USET. We would like, however, to emphasize two major issues here. The draft NHPA establishes exclusions for certain situations where Section 106 consultation under the National Historic Preservation Act would not be required. In some cases these exclusions run for hundreds, and even thousands of miles along railway corridors and interstate highways.

The justification for these exclusions appears to be a determination that in the excluded areas there is a minimal chance of further damaging sites of historic importance. However, just because an area may have been subject to some disturbance, does not mean that further disturbance will not cause further harm. The law with regard to tribal consultation is clear and provides for no exceptions: federal agencies "shall consult with any Indian tribe and Native Hawaiian organization that attached religious and cultural significance" to properties that might be affected by a federal undertaking. 16 U.S.C. Section 470a(d)(6)(B). The exclusions, if applied to tribal sites, are a violation of the law's clear consultation mandate.

The National Historic Preservation Act requires Federal agencies to consult with Indian tribes whenever a Federal undertaking would affect a property of religious and cultural significance to a tribe, whether it is located on or off of tribal lands. Tribes already exercise great control on tribal lands, however, as described above, most of our sacred sites are located off tribal lands. It is extremely important to us, therefore, that we be fully consulted for sites off tribal lands. In Part IV of the draft NHPA, two alternatives are presented for consulting with tribes with regard to sacred sites off tribal lands. Alternative A was developed by a working group with almost no involvement by tribes. This alternative would establish a very complicated procedure of dubious legality. USET has proposed Alternative B. Alternative B is simple and clear and meets the requirements of the National Historic Preservation Act. Under its terms, the FCC is obligated to engage in full consultation with any tribe potentially affected by the siting of a communications tower. However, in order to address certain practical problems, it provides that the FCC does not have to engage in such consultation if an Applicant (cell tower builder) secures a letter of certification from any and all interested tribes that state that such consultation is no longer necessary because any tribal concerns have been adequately addressed. We strongly support Alternative B as practical and legal.

Our tribe is committed to working in good faith with the FCC and cell tower builders to assure that everything is done to facilitate the construction of communications facilities, so long as our

Page Three
August 5, 2003

religious and cultural heritage is not compromised. This is an obligation we have to our ancestors and to our children and cannot waver from it.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, reading "Rickey L. Armstrong, Sr." with a stylized flourish at the end.

Rickey L. Armstrong, Sr., President
SENECA NATION OF INDIANS

RLA/mja